Interstate Compacts & Agencies

1998

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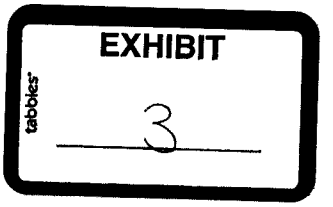

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FOREWORD

The Council of State Governments has been involved with interstate compacts for many years. This document updates a 1995 publication. It lists compacts by subject and state and provides a brief description about the compacts, statutory citations from 1998 and the year that the member states joined the compacts. This edition also includes the titles, telephone numbers, facsimile numbers, and
e-mail addresses of the agencies or state officials who administer the compacts. When a compact creates an interstate agency or other body, we have provided the agency name, address, telephone and facsimile number, e-mail address, and Web address. When available, we also provided the names of agency staff and some officers. Generally, we did not list officers because they change frequently.

Readers will also notice some compact titles contain words in parentheses. This indicates the state statutes or their indexes listed derivatives of one title. Some compacts are even identified by two titles, one of which is in parentheses. This indicates a generic name for the compact plus the name of the compact as listed by the state or the code index. There are two reasons for this. First, the enabling legislation containing a compact may not have had the same title as the compact. Second, code publishers may have substituted an abbreviated or different title to satisfy their indexing requirements. In cases where there is only partial information (e.g., title and citations, but no description) we provided as much information as we could get during the course of our research.

Some compacts are listed as "may be dormant or defunct" because of the large number of compacts which are still on the books but have not been confirmed as dormant or defunct by the states.

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INTRODUCTION

The Nature of Interstate Compacts

Compacts are agreements between two or more states that bind them to the compacts' provisions, just as a contract binds two or more parties in a business deal. As such, compacts are subject to the substantive principles of contract law and are protected by the constitutional prohibition against laws that impair the obligations of contracts (U.S. Constitution, Article I, Section 10).

That means that compacting states are bound to observe the terms of their agreements, even if those terms are inconsistent with other state laws. In short, compacts between states are somewhat like treaties between nations. Compacts have the force and effect of statutory law (whether enacted by statute or not) and they take precedence over conflicting state laws, regardless of when those laws are enacted.

However, unlike treaties, compacts are not dependent solely upon the good will of the parties. Once enacted, compacts may not be unilaterally renounced by a member state, except as provided by the compacts themselves. Moreover, Congress and the courts can compel compliance with the terms of interstate compacts. That's why compacts are considered the most effective means of ensuring interstate cooperation.

History of Interstate Compacts

Historically, compacts have been enacted for a variety of reasons, though they were seldom used until the 20th century. Between 1783 and 1920, states approved 36 compacts, most of which were used to settle boundary disputes. But in the last 75 years, more than 150 compacts have been created, most since the end of World War II.

Their purposes range from implementing common laws to exchanging information about common problems. They apply to everything from conservation and resource management to civil defense, emergency management, law enforcement, transportation, and taxes. Other compact subjects include education, energy, mental health, workers compensation and low-level radioactive waste.

Some compacts authorize the establishment of multistate regulatory bodies. The first and most famous of these is probably the New York-New Jersey Port Authority, which arose from a 1921 compact between New Jersey and New York. But other agreements are simply intended to establish uniform regulations without creating new agencies.

In recent years, compacts have grown in scope and number. Today, many are designed for regional or national participation, whereas the compacts of old were usually bistate agreements.

Recent efforts include the *Emergency Management Assistance Compact*, the *Interstate Compact on Industrialized/Modular Buildings*, *Interstate Insurance Receivership Compact* and several low-level radioactive waste compacts, which were essentially mandated by Congress.

Creating Interstate Compacts

Compacts are essentially contracts between states. To be enforceable, they must satisfy the customary requirements for valid contracts, including the notions of offer and acceptance.

An offer is made when one state, usually by statute, adopts the terms of a compact requiring approval by one or more other states to become effective. Other states accept the offer by adopting identical compact language. Once the required number of states has adopted the pact, the "contract" between them is valid and becomes effective as provided. The only other potential requirement is congressional consent.

Determining Whether Congressional Consent is Required

Article I, Section 10 of the U.S. Constitution provides in part that "no state shall, without the consent of Congress, enter into any agreement or compact with another state." Historically, this clause generally meant all compacts must receive congressional consent.

However, the purpose of this provision was not to inhibit the states' ability to act in concert with each other. In fact, by the time the Constitution was drafted, the states were already accustomed to resolving disputes and addressing problems through interstate compacts and agreements. The purpose of the compact clause was simply to protect the pre-eminence of the new national government by preventing the states from infringing upon federal authority or altering the federal balance of power by compact.

Accordingly, the Supreme Court indicated more than 100 years ago in *Virginia v. Tennessee*, 148 U.S. 503 (1893) that not all compacts require Congressional approval. Today, it is well established that only those compacts that affect a power delegated to the federal government or alter the political balance within the federal system, require the consent of Congress.

Whether or not a proposed compact falls within one of these categories ultimately depends upon the purpose and effect of its terms. Compacts that potentially alter the balance within the federal system, and therefore require congressional consent, include boundary settlements and other pacts that arguably have a discriminatory impact against non-party states. For example, a river basin agreement between two or more states that might affect the water rights of non-party states would surely require congressional approval. Determining whether a compact affects federal powers is more difficult. Generally, any compact that touches on an area of mutual state-federal concern, or threatens to interfere with the doctrine of federal preemption, may be said to require congressional consent.

By example, it is almost easier to identify agreements that do not require congressional consent. Included among these are compacts concerning matters in which state authority is clearly pre-eminent. Education is one such area.